

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:DAL:2OKL:POSTF-154101-01, 72-N-1998-01
CGMcLoughlin

date: January 10, 2002

to: Appeals Office, Large and Mid-Size Business, Area 2, Team 7
Attn: Jerald Wyssman

from: Associate Area Counsel (LM:NR:DAL:2), Oklahoma City P.O.D.
2000-OKC

subject: Request for Advisory Opinion

Taxpayer: [REDACTED]

EIN: [REDACTED]

We are following up on our July 2, 2001 memorandum concerning the interest netting claims filed by the subject taxpayer. As you know, our July 2, 2001 memorandum was submitted to the National Office, Chief Counsel, for review pursuant to CCDM (35)3(19)4(4). Based on that review, we wish to clarify certain aspects of our earlier memorandum.

As indicated in the earlier memorandum, [REDACTED] ("[REDACTED]") submitted an interest netting claim for its consolidated return group. The claim sought to net overpayment rates for two overpayment periods, [REDACTED] and [REDACTED] with underpayment interest rates on underpayments for [REDACTED], among other years. The government disputed the full availability of interest netting for a [REDACTED] payment on a [REDACTED] deficiency. On [REDACTED], [REDACTED] paid a total of \$ [REDACTED] on the [REDACTED] account, consisting of \$ [REDACTED] in tax and \$ [REDACTED] in interest. The [REDACTED] payment was open for an interest netting claim on July 22, 1998.

Under Rev. Proc. 99-43, 1999-2 C.B. 579, and I.R.C. § 6621(d), interest for periods commencing prior to July 22, 1998, (interest accruing prior to October 1, 1999) can qualify for a net rate of zero if the applicable period of limitations has not expired with regard both to the tax underpayment and overpayment and the taxpayer reasonably identifies the overlapping period for which the zero rate applies and files a timely request for interest netting. A separate determination

of timeliness must be made for each period covered in the interest netting request. The applicable period of limitations for underpayment interest is found in I.R.C. § 6511 and for overpayment interest is found in 28 U.S.C. §§ 2401 and 2501. For purposes of claiming a refund under I.R.C. § 6511, any issue that results in an overpayment of tax, penalty or interest for the taxable year may be raised under I.R.C. § 6511 by a timely claim made within two years of payment whether the payment consists of tax, penalty or interest. Allstate Ins. Co. v. United States, 550 F.2d 629 (Ct. Cl. 1977).

In the current situation, [REDACTED] made a total payment of \$ [REDACTED] on the [REDACTED] account within 2 years of July 22, 1998. Thus, a claim for interest netting with respect to those payments may be pursued by [REDACTED] even though portions of the payment were applied to tax and to interest. However, the actual periods and amounts to which a zero rate of interest can be applied will be based solely on these payments and not on any other payments made 2 years prior to July 22, 1998. Due to the complicated nature of the calculations in this case, we recommend that you contact the Office of Penalty and Interest Administration in New Carrollton and obtain technical guidance on the computation of the zero rate of interest in this case.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. Please contact Glenn McLoughlin at (405) 297-4803 if you have any questions. We are closing our case.

MARK A. O'LEARY (Group 2)
Associate Area Counsel

By: /S/ C. GLENN McLOUGHLIN
C. GLENN McLOUGHLIN
Senior Attorney

cc: AAC (LM:NR:DAL:2)